UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,868	08/20/2001	Shulin Larry Zhang	7427M	5590

27752 7590 05/29/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 05/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

mk-3

Office Action Summary	Application No. 09/913,868	Applicant(s) ZHANG ET AL.	
	Examiner Gregory R. Del Cotto	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1. Claims 1-19 are pending.

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claims 18 and 19, these claims are vague and indefinite in that these claims present the problem of double inclusion in that the "polymeric material" and "one or more linear or cyclic polyamines" overlap in scope. Note that, each component listed in a claim must represent a separate and distinct entity. Also, claims in which one component is defined so broadly that it reads on a second, fail to meet the requirements of the second paragraph of 35 USC 112. See Ex parte Ferm et al, 162 USPQ 504.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, and 11 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 98/12296.

'296 teaches a composition comprising a dye fixing agent and a specific amino-functional polymer, said composition providing an improved color car on fabric upon laundry treatments. See Abstract. A fabric softener component may also suitable be used in the composition so as to provide softness and antistatic properties to the treated fabrics. When used, the fabric softener will typically be present at a level sufficient to provide softening and antistatic properties. Suitable fabric softening agents include those having the same general formula as recited by instant claim 13.

When an emulsion is employed the emulsifier may be any suitable emulsification or suspending agent. Preferably, the emulsifier is a cationic, nonionic, zwitterionic or

anionic surfactant or mixtures thereof. See page 23, lines 30-38. The composition may also optionally include additional components such as enzymes, soil release polymers, perfumes, optical brighteners, etc. See page 31, lines 15-25. Another optional ingredient is a liquid carrier. Suitable liquid carriers include water, alcohols such as ethanol, propanol, butanol, etc. See page 36, line 30 to page 37, line 7.

Specifically, '296 teaches a color care composition containing 15% DTDMAC, 0.6% PEG, 1% perfume, 3% PEI 1800 E1, 1% dye fix 1, 2% dye fix 2, the balance water and minors. See column 29, lines 10-25. Note that, the Examiner maintains that a polymer such as PEI 1800 E1 is encompassed by the broad recitation of "polymeric material" as recited by instant claim 1. Accordingly, the broad teachings of '296 anticipate the material limitations of the instant claims.

Claims 12-16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/12296.

'296 is relied upon as set forth above. However, 296 does not a fabric cleaning composition contain a chelating agent, solvent, specific fabric softening, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a fabric cleaning composition contain a chelating agent, solvent, specific fabric softening, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed

components, because the broad teaching of '296 suggest a fabric cleaning composition contain a chelating agent, solvent, specific fabric softening, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/12296 as applied to claims 1, 2, 11-16, 18, and 19 above, and further in view of WO 99/07813.

'296 is relied upon as set forth above. However, '296 does not teach the use of the specific amino acid polymers as recited by the instant claims.

'913 is relied upon as set forth below.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a specific amino acid polymer in the composition taught by WO 98/12296, with a reasonable expectation of success, because '913 teaches the advantageous properties imparted to a similar composition suitable to cleaning fabrics.

Claims 1-11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/07813 in view of WO 98/12296.

'813 teaches compositions that contain from about 1% to about 80% by weight of surfactants selected from the group consisting of nonionic, anionic, cationic, amphoteric, or zwitterionic surfactants and mixtures thereof; and from about 0.1% to about 10% by weight of a mixture of amino acid based polymers, oligomers or copolymers wherein the poymer, oligomer, or copolymer contains at least about 5 mole%, of one or more amino acids and an organic acid. These amino acid based polymers, oligomers or copolymers

can be obtained by condensing a basic amino acid, such as lysine, with an organic acid. The amino acid based polymer, oligomer or copolymer materials are useful as fabric treatment agents as they can impart fabric appearance and integrity benefits to fabrics and textiles laundered in washing solutions which contain such materials. See Abstract. The compositions are used to clean laundry and textiles in an aqueous solution. See page 5, lines 30-40.

In addition to surfactants and builders, and amino acid based polymer, the detergent compositions may also include any number of additional optional ingredients. The include detergent components such as enzymes, suds boosters, soil suspending agents, germicides, pH adjusting agents, chelating agents, hydrotropes, perfumes, etc. See page 15, line 50 to page 16, line 5.

Specifically, '813 teaches amino acid polymers which are encompassed by the polymeric materials as recited by the instant claims.

'813 does not specifically teach the use of a fabric softening agent or a fabric enhancement composition containing a polymeric material, fabric softening active, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

'296 is relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a fabric softener such as the one claimed in instant claim 13, in the composition taught by WO 99/07813, with a reasonable expectation of success, because Leurentop et al teach a similar composition containing the specific

fabric softener as recited by instant claim 13 and, further, '813 teaches the use of optional laundry components which would encompass fabric softening components.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate fabric enhancement composition containing a polymeric material, fabric softening active, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teaching of Leurentop et al suggest a fabric enhancement composition containing a polymeric material, fabric softening active, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/12296 as applied to claims 1,2, 11-16, 18, and 19 above, and further in view of Baeck et al (US 5,629,278).

'296 is relied upon as set forth above. However, '296 does not teach the specific solvent in addition to the other requisite components of the composition as recited by instant claim 17.

Baeck et al teach detergent compositions, including dishwashing and laundry composition containing a polygalacturanase enzyme substantially free of other pectic enzymes. See column 1, ines 5-10. Additional components include solvents such as butyl carbitol, ethanol, propanol, etc. See column 23, lines 1-20.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a solvent such as butyl carbitol in the cleaning composition taught by '296, with a reasonable expectation of success, because Baeck et al teach the equivalence of butyl carbitol to ethanol in a similar detergent composition and, further, '296 teaches the use of ethanol.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,531,438 or claims 1-19 of US Patent No. 6,525,013. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-34 of US 6,531,438 or claims 1-19 of US 6,525,013 encompass the material limitations of the instant claims.

Claims 1-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of

copending Application No. 09/914525 or claims 1-3 of 10/110914. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-10 of 09/914525 or claims 1-3 of 10/110914 encompass the material limitations of the instant claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone

numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
May 26, 2003